October 26, 2004

Re: MDR #: M2-05-0159-01
IRO #: 5055

TRANSMITTED VIA FAX TO:
Texas Workers' Compensation Commission
Medical Dispute Resolution
Fax: (512) 804-4868

Dear ___

In accordance with the requirement for TWCC to randomly assign cases to IROs, TWCC assigned your case to ___ for an independent review. ___ has performed an independent review of the medical records to determine medical necessity. In performing this review, ___ reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

I am the Secretary and General of ___ and I certify that the reviewing physician in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this care for determination prior to referral to the Independent Review Organization.

Information and medical records pertinent to this medical dispute were requested from the Requestor and every named provider of care, as well as from the Respondent. The independent review was performed by a matched peer with the treating health care provider. Your case was reviewed by a physician who is Board Certified in Pain Management and is currently listed on the TWCC Approved Doctor List.

REVIEWER'S REPORT

Information Provided for Review:
TWCC-60, Table of Disputed Services, EOB's
Information provided by Requestor:
- office notes 05/18/04 – 08/12/04
- nerve conduction study 07/01/04
- procedure note 08/05/04
- radiology reports 05/11/02 – 08/05/04

Information provided by Respondent:
- correspondence 10/12/04
- documentation of communication w/provider

Information provided by Rehab Specialist:
- office notes 05/08/02 – 02/03/04
- impairment rating 10/21/02
- procedure notes 06/03/02 – 07/24/02
- radiology reports 05/08/02 – 05/11/02

Clinical History:
This claimant was injured at work on ___. She started to have lower back pain after bending forward to tie her shoes.

On 5/8/02, the claimant was evaluated her treating doctor, a physiatrist, for complaints of lumbar pain. Physical examination demonstrated negative straight leg raising test, no neurologic deficits, and fairly normal lumbar range of motion. The claimant was sent for a lumbar MRI scan on 5/11/02, which demonstrated a moderate left L4/L5 disc herniation and moderate degenerative disc disease at the other discs. The claimant returned to the treating doctor on 6/3/02 for an epidural steroid injection. She returned for follow-up on 7/3/02 reporting improvement and undergoing a 2nd epidural steroid injection. A 3rd epidural steroid injection was performed on 7/24/02. The claimant returned on 8/21/02 reporting that she had improvement in symptoms following the epidural steroid injections. Physical examination was completely unchanged.

An impairment rating was performed by the treating doctor on 10/21/02 in which he stated that the patient was at statutory maximum medical improvement. Physical examination, again, was negative with no focal neurologic deficits. On 1/23/03, the claimant returned to her treating doctor now complaining of recurrence of lumbar pain radiating into the RIGHT leg. He indicated that the claimant might be a candidate for surgery at the L5/S1 level, although her MRI clearly demonstrated pathology only at the L4/L5 level, and then only on the LEFT side.

The claimant's complaints of pain, and negative physical examination, persisted from 2/20/03 through 2/3/04. Her pain complaints remained solely into the RIGHT leg. The claimant was then sent to an orthopedic surgeon for evaluation on 5/18/04 who also documented her complaint of RIGHT leg pain and foot pain. Physical examination demonstrated no weakness, no sensory loss, good strength, normal reflexes, and negative straight leg-raising test. The surgeon reviewed the claimant's MRI, confirming the LEFT L4/L5 disc herniation. He referred the claimant for a repeat MRI on 6/3/04, which now demonstrated mild degeneration at L5/S1, no significant disc protrusion at the L4/L5 level, and no disc abnormality at the L3/L4 level. Essentially, this MRI demonstrated resolution of the previously seen LEFT L4/l5 disc herniation and only minimal degenerative changes.

The claimant was then sent for EMG/NCV studies on 7/1/04 demonstrating what he termed "mild bilateral subacute L5 and S1 radiculopathy, worse at the S1 level than the L5 level". No motor or sensory neuropathy was noted. The claimant returned to the surgeon on 7/1/04, who stated that discography was now indicated at L3/L4, L4/L5, and L5/S1. He stated that he would propose anterior fusion "if the L4/L5 discogram substantiates that this is the painful area".

On 8/5/04, lumbar discography was performed. The discogram demonstrated significant pain reproduction at the L3/L4 and L4/L5 levels. At L5/S1, although there was no significant abnormality architecturally, the claimant had discomfort. Discography was then performed at the L2/L3 level, again reproducing a mild

amount of pain. The surgeon who performed the discogram stated that the L3/L4 and L4/L5 levels were the most significant pain generators. Post discogram CT, however, demonstrated minimal extravasation at L3/L4, slight amounts of central extravasation at L5/S1, and absolutely no abnormalities at L2/L3 or L4/L5.

The claimant then followed up with the surgeon on 8/12/04. He stated that the claimant should consider interbody fusion of L3/L4 and L4/L5 both anteriorly and posteriorly, or that she should "consider IDET at those levels to see if we can gain any significant relief" as a temporary measure. He has subsequently requested percutaneous disc decompression at L3/L4 and L4/L5.

Disputed Services:
Percutaneous disc decompression at L3-4, L4-5.

Decision:
The reviewer agrees with the determination of the insurance carrier and is of the opinion that percutaneous disc decompression at L3-4 and L4-5 is not medically necessary in this case.

Rationale:
This claimant does not meet any of the accepted criteria for either the IDET procedure or percutaneous disc decompression, which is not the same as IDET. Her pain complaints have never had any medical validity, as she always complains of contralateral lower extremity pain relative to the site of disc herniation. There is absolutely no valid medical mechanism by which a left-sided disc herniation can produce right leg pain such as what has been documented in these records. Therefore, the claimant's pain complaints are clearly non-physiologic, medically invalid, and contraindicative to invasive treatment.

Secondly, IDET is indicated only for the treatment of painful annular tear. There is no objective evidence of the claimant having annular tears at the L3/L4 or L4/L5 levels, as the discography clearly demonstrated minimal extravasation at L3/L4 and no extravasation of dye at the L4/L5 level. Therefore, the claimant is not a candidate for IDET.

Thirdly, the claimant had subjective complaints of pain during discography when discs that were architecturally normal were tested. This completely invalidates the discography results, and certainly precludes any valid medical decision-making regarding invasive procedures based on such results.

Finally, the claimant is not a candidate for percutaneous disc decompression, as there is no evidence whatsoever of disc herniation or nerve root compression to require any disc decompressive procedures whatsoever. Essentially, this claimant complains of nonphysiologic subjective pain complaints only with no objective evidence of disc or nerve root pathology to substantiate those complaints. She does not meet any of the nationally accepted criteria for either IDET procedure or percutaneous disc decompression. Furthermore, it is not medically indicated, and in fact, medically contraindicated.

We are simultaneously forwarding copies of this report to the payor and the Texas Workers' Compensation Commission. This decision by ___ is deemed to be a Commission decision and order.

YOUR RIGHT TO REQUEST A HEARING

Either party to this medical dispute may disagree with all or part of this decision and has a right to request a hearing.

If disputing a spinal surgery prospective decision a request for a hearing must be in writing and it must be received by the TWCC Chief Clerk of Proceedings **within ten (10) days** of your receipt of this decision (28 Tex. Admin. Code 142.5©).

If disputing other prospective medical necessity (preauthorization) decisions a request for a hearing must be in writing and it must be received by the TWCC Chief Clerk of Proceedings **within twenty (20) days** of your receipt of this decision (28 Tex. Admin. Code 148.3).

This Decision is deemed received by you **five (5) days** after it was mailed (28 Tex. Admin. Code 102.4(h) or 102.5 (d)). A request for a hearing should be sent to:

Chief Clerk of Proceedings
Texas Workers' Compensation Commission, MS-48
7551 Metro Center Dr., Ste. 100
Austin, TX 78744-1609

A copy of this decision should be attached to the request. The party appealing the decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute.

I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to the carrier, the requestor and claimant via facsimile or U.S. Postal Service from the office of the IRO on October 26, 2004.

Sincerely,